

Panama Canal Regulations

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the foregoing requirements if the employee shows that he exercised due diligence and that there is good cause for his failure to meet the requirements.

§ 256.9 Hearing procedures.

(a) The hearing will be conducted by a hearing official who is not an employee of the Commission or otherwise under its supervision or control, except that hearings on waivers may be conducted by an employee of the Commission.

(b) The hearing official shall prepare a summary record of the hearing, which will be maintained by the Commission as a part of the record of the offset procedures; however, no transcript of the hearing shall be made.

(c) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility or use of evidence, except that the hearing official shall limit the evidence to testimony and documents which are relevant to the issues being considered.

(d) At the hearing, the employee and the Commission may introduce evidence and may call witnesses, consistent with the provisions of paragraph (c) of this section. Witnesses shall testify under oath and are subject to cross-examination.

(e) If the matter being contested is the existence or amount of a debt, the hearing official shall issue a decision upholding the Commission determination, unless the hearing official finds that the Commission determination was clearly erroneous.

(f) If the hearing official finds that the Commission's determination of the amount of the debt was clearly erroneous, he shall determine the amount owed by the employee, if any.

(g) If the matter being contested is the Commission's proposed offset schedule, the hearing official shall uphold that schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under that schedule would result in an extreme financial hardship for the employee.

(h) If the matter being contested is the credibility or veracity of the employee in connection with his request for a waiver, the hearing official shall

make a determination as to the employee's credibility or veracity.

(i) If the hearing official finds that the payments called for under the Chief Financial Officer's proposed offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time which will not result in an extreme financial hardship for the employee.

(j) The hearing official shall issue a written opinion setting forth his decision and a statement of the reasons supporting it as soon as practicable, but not more than 60 days after the filing of the petition requesting the hearing, unless the hearing official has granted a delay in the proceedings at the request of the employee. The opinion shall contain his determinations as to the existence and amount of the debt, the origin of the debt, and, if a request for a waiver has been made, the employee's veracity or credibility.

(k) If the employee files a petition for a hearing in connection with a request for a waiver under a statute requiring a waiver and meets the time limits for filing material prior to the hearing, no deductions to effect the offset will be made until the employee has been provided a hearing and a final written decision has been issued.

§ 256.10 Representation.

An employee may represent himself or may be represented by another person, including an attorney, during any proceedings under this part.

§ 256.11 Applicable legal principles.

(a) The hearing official may not find that the Commission's determination of the existence or amount of the employee's debt was erroneous—

(1) On the basis of State or local statutes of limitations;

(2) On the basis that the employee is owed monies by the United States (other than regular salary) and that payment of that debt by the United States would eliminate or reduce the debt, unless the employee has, not later than 45 days after receipt of advance notice of the debt under § 256.4, submitted written confirmation by the

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agency which is indebted to the employee that such money is owed and has assigned the payment of that money to the Commission; or

(3) On the basis of any factual or legal argument that was decided on the merits adversely to the employee in a court of competent jurisdiction.

(b) In determining whether the Chief Financial Officer's decision concerning the existence or amount of the employee's debt is clearly erroneous, the hearing official shall be bound by the relevant Federal statutes and regulations governing the program which gave rise to the debt, and general principles of the law of the United States, if relevant.

§ 256.12 Standards for determining extreme financial hardship.

(a) An offset will be considered to produce an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his spouse and dependents. Essential subsistence expenses consist of the costs incurred for medical care, food, housing, clothing, and transportation only.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the following matters shall be considered—

(1) The income from all sources of the employee and his spouse and dependents;

(2) The extent to which the assets of the employee and his spouse and dependents are available to pay the debt or the essential subsistence expenses;

(3) Whether the essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his spouse and dependents can borrow money to pay the debt or the essential subsistence expenses; and

(5) The extent to which the employee and his spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

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§ 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

(a) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency shall forward to the Commission a certified statement of the existence of the debt. This document shall include a statement that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date on which the claim against the debtor accrued, if different from the payment due date, and a statement that agency regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(b) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the actions taken under section 5514(b) and give the dates the actions were taken.

(c) If, after the debt claim has been submitted by the creditor agency, the employee transfers to a position in another agency, the Commission will certify the total amount of the collection made on the debt. One copy of the certification will be furnished to the employee, and one copy will be furnished to the creditor agency, together with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder, together with the certification of the amount which has been collected. Upon receiving the official personnel folder, it will be the responsibility of the new paying agency to resume the collection from the individual's current pay and notify the employee and the creditor agency of the resumption. In cases in which an employee transfers to the Commission while a debt is being collected from him by another Federal agency by offset, the Commission will resume the collection and notify the employee that it is doing so.

(d) For collections of debts by offset under this section, the Commission